

REMARKS

Status of Claims

The amendments presented in Applicant's Response of June 23, 2009 were not entered by the Examiner. Accordingly, the Listing of Claims does not incorporate those amendments. This paper does not amend, cancel, or add any claims. Thus, claims 6-10, 12-19, and 25-30 are pending and under examination and claims 1-5 and 20-24 are withdrawn.

Interview Summary

Applicant wishes to thank Examiner Grosso for courtesies extended to Applicant's representatives during the telephonic interview of July 15, 2009. No agreement on allowable subject matter was reached during the interview.

Applicant respectfully requests that the following remarks be re-considered as they elaborate and memorialize Applicant's contentions of non-obviousness discussed with the Examiner during the recent telephonic interviews.

Rejections Under 35 U.S.C. 103(a)

Claims 6-10, 12-19, and 25-30 stand rejected as obvious over Hill (U.S. Patent 5,476,184) in view of Hurwitz (U.S. Patent 5,620,069) alone or in further combination with additional secondary references. Applicant respectfully traverses all rejections and submits that the basic combination of Hill and Hurwitz fails to teach several elements required of independent claims 6 and 26, the only pending independent claims, and several elements of specific dependent claims. The deficiencies in the Hill/Hurwitz combination, as applied to claims 6 and 26, are not remedied by any of the cited secondary references. Additionally, the cited prior art lacks several elements specified in various dependent claims.

Hill and Hurwitz do not provide an “inner frame having rigid walls”

Claims 6-10, 12-19, and 25-30 each encompass a container system comprising an inner frame having rigid walls. The Examiner asserts that a single wire of a wire frame can be considered a wall. Applicants submit that the Examiner’s position is in conflict with the well accepted understanding of a wall. To this end, Applicant’s provide in Exhibit A a dictionary definition of a wall, which is defined as “a vertical structure... with a length and height much greater than its thickness, used to enclose, divide, or support.” Additionally, a wall is defined as “an upright structure... serving to enclose, divide, or protect an area...” Thus, in the context of the instant invention, the walls of the inner frame must be higher and wider than they are thick, and serve to divide the space within the frame from the space outside of the frame and provide some amount of protection to the contents. As illustrated in Figures 3 and 5 of the Specification, Applicant’s inner frame is made of thin rigid panels that fully meets the well accepted definition of a wall.

Applicant respectfully submits that neither Hill nor Hurwitz provide an inner frame having rigid walls. Hill provides a soft-sided duffel bag having a removable framing device consisting of wire struts. As illustrated in Figure 2 of Hill, the insert is formed as two open wire squares or rectangles used to support the side walls of the outer shell, connected by two struts running the length of bag approximately at the corner junction of the longitudinal sides and bottom of the outer shell. The open wire structures that support the short sides of the outer shell are not walls because they do not form an effective partition, as required of a wall structure, nor do they provide any protection or physical barrier to shield the contents contained within. Because the wire structures are open, contents can pass freely between the inside to the outside of the structure. Thus, by the most basic definition, the Hill device lacks walls.

Additional evidence that the Hill framing device lacks walls comes directly from Hill’s description of its construction. Hill describes this device as consisting of struts. See, for example, Hill at col. 1, ll. 60-62, col. 2, ll. 1-5, and col. 2, ll. 11-14. A strut is “a bar used to support or strengthen a structure.” Exhibit B (emphasis added). When taken together in the

context of the instant invention, a strut may be characterized as a reinforcing bar, whereas a wall is a planar structure that forms a barrier. Clearly the struts of Hill's framing device are not walls, as alleged by the Examiner.

Furthermore, the Hill framing device is not rigid, as required by the instant claims. Hill states:

The struts of the invention are formed of spring tempered wire so that when in the upright supporting position, they can be readily deformed and in fact can be drastically distorted and still automatically return to their original shape and position.

Hill at col. 2., ll. 1-5 (emphasis added).

Clearly from this description, the wire struts of Hill are not rigid, do not serve as an effective partition, and do not provide effective protection for the contents contained inside.

Hurwitz does not remedy this deficiency. Hurwitz provides a duffel bag having wire struts ("framing members") which serve to hold open the bag. As illustrated in Figures 3-5 of Hurwitz and the accompanying description, the framing members are akin to ribs which are made from flat spring steel about 0.75 inches wide and 0.042 inches thick. Hurwitz at col. 3, ll. 20-24. The spring steel ribs do not form a wall in that they do not effectively partition an inner space from an outer space or provide any meaningful protection to the internal contents.

Taken together, the combination of Hill and Hurwitz, upon which all rejections are based, fails to disclose an inner frame having rigid walls. Each reference discloses some form of wire frame or system of struts which lacks a wall structure (i.e., a vertical structure having a length and height much greater than the thickness), fails to effectively partition the inner space from the outer space, and fails to provide any significant protection to the internal contents. Thus, the Examiner has failed to identify every element of the claimed invention in the prior art and, for this reason alone, all asserted rejections should be withdrawn.

Hill and Hurwitz do not provide a "pair of opposing, rigid longitudinal walls and a pair of opposing side walls" or "at least four rigid walls."

Claims 26-30 each encompass a container system with an inner frame having a pair of opposing, rigid longitudinal walls and a pair of opposing side walls. As discussed above, Applicant submits that the combination of Hill and Hurwitz fail to teach or suggest an inner frame having any rigid walls. However, even accepting *arguendo* that the wire structures supporting the side walls of the Hill duffel bag are rigid walls, neither prior art reference teaches or suggests opposing rigid longitudinal walls. The side wall supports of Hill are connected via a single longitudinal strut running along each longitudinal side of the bag. These struts fails to meet the most basic definition of a wall which requires that the length and height be much greater than the thickness. In the case of Hill's struts, the height and width are the same; characteristic of a rod not a wall. Furthermore, Hill's longitudinal struts do not "serve to enclose, divide, or protect an area." A strut acts as support but not a barrier. Thus, the inner frame of claims 26-30 is distinct from the Hill framing device which lacks any longitudinal walls, let alone rigid ones.

As discussed above, Hurwitz provides a strut system akin to ribs which is devoid of any structure that could be interpreted as a wall. Thus, neither Hill nor Hurwitz teaches or suggests an inner from having a pair of opposing rigid longitudinal walls and a pair of opposing side walls. For this reason alone, all rejections of claims 26-30 should be withdrawn.

Travis does not provide an "inner frame having rigid walls"

Claims 17-19 and 26-30 stand rejected as obvious over Hill in view of Hurwitz and Travis (U.S. Patent 4,585,159), alone or in further combination with additional references. The Examiner characterizes Travis as disclosing

a frame structure capable [of] being used as the inner frame of the invention made of rigid material (Figures 1 and 2, column 2, lines 21-23) with the side walls linking the ends of the longitudinal walls and the walls being collapsible allowing a reduction in a distance between the longitudinal walls (column 2, lines 14 to 25).

Final Office Action at page 5.

Applicant respectfully submits that the Examiner has mischaracterized Travis at it applies to the instant invention. Travis does not disclose a frame structure with side walls made of rigid material, as alleged by the Examiner. In fact, Travis discloses a two-part container system consisting of an outer shell made of a rigid material (Figure 3) and an inner wire frame (Figure 4). The wire frame of Travis is clearly illustrated in Figure 4 and, in its open position, is very similar to the wire frame of Hill. The Travis inner frame consists of two wire squares or rectangles corresponding to the lateral (short) sides of the container, which are connected by a pair of longitudinal struts. Travis at Figure 4. The wire frame differs from that of Hill in that the longitudinal struts run along the top of the longitudinal walls of the outer shell rather than the bottom, and in the hinging mechanism used to collapse the frame. These differences, however, do not address the basic deficiency in all of the prior art relied upon by the Examiner—that the inner frame is made of wire struts—not rigid walls. Thus, Travis does not remedy the deficiency of the Hill/Hurwitz combination because no reference teaches an inner frame having rigid walls.

Applicant also traverses this rejection to the extent that the Examiner relies on the entire Travis container (i.e., the rigid outer shell and the wire inner frame illustrated in Figures 3 and 4, respectively) to satisfy Applicant's requirement for an inner frame. As discussed above, Travis provides an entire container solution consisting of an outer shell and an inner frame. For the reasons already of record, Applicant submits that there is no suggestion or motivation to use this entire container system as an inner frame in another container system by the further addition of a soft-sided outer shell.

Furthermore, this line of reasoning based on Travis was implicitly repudiated in this case by the Board of Patent Appeals and Interferences. For example, the Examiner's attention is

respectfully directed to the previously asserted rejection of claims 17-19 based on the combination of Redzisz, Zeddies, and Travis. The original rejection asserted by the Examiner alleged that it is obvious to insert the entire Travis container, as an inner frame, into the outer shell of Redzisz. See, for example, Examiner's Answer mailed March 29, 2007, at page 13, para. 3. However, following oral argument rebuttal by Applicant, the Board, in reaching its decision, declined to adopt and affirm this rejection. Instead, the Board applied a new basis for the rejection of claims 17-19, which ultimately led to Applicant's successful Request for Reconsideration and reopening of prosecution. The new rejection by the Board alleged the obviousness of substituting the wall linkages of Travis for the pivotable mounts on the Zeddies inner frame. Decision on Appeal mailed, at page 22, para. 2; see also, Request for Rehearing mailed December 1, 2008, at pages 13-15. Thus, in the Decision on Appeal and the Decision on Request for Rehearing (mailed January 29, 2009), the Board specifically reviewed but failed to affirm an obviousness rejection based on the use of Travis' entire container as an inner frame within a bag having a soft-sided outer shell. The failure of the Board to affirm this rejection implicitly and effectively repudiates the notion that it is obvious to use Travis' entire container as an inner frame.

In sum, Travis does not remedy the deficiency of the Hill/Hurwitz combination in that none of these prior art references teaches or suggests the use of an inner frame having rigid walls. For this reason alone, the rejection of claims 17-19 and 26-30 is traversed and should be withdrawn.

Travis does not provide a "rigid bottom pivotably engaged to one of said pair of opposing rigid walls"

Claims 18 and 27 stand rejected as obvious over Hill in view of Hurwitz and Travis. The Examiner applies Hill, Hurwitz, and Travis as discussed above and further alleges that Travis discloses a bottom pivotably engaged to the opposing rigid walls and pivots between open and collapsed positions. Final Office Action at pages 5 and 8, referencing Travis at col. 2, ll. 29-30. Applicant respectfully traverses this rejection.

The Examiner's citation to the bottom flaps of Travis (elements 22 and 24 in Figs. 1 and 2) is a clear indication that this rejection is based on an assertion that it is obvious to use the entire Travis container system as the inner frame of the instant claims. As discussed above, any rejection based on the use of Travis' entire container (i.e., the rigid outer shell and the inner wire frame) in place of Applicant's inner frame is flawed for at least two reasons. First, the Examiner has not demonstrated that the prior art provides any motivation to use Travis' entire container system as an inner frame. The Travis container system contains its own inner wire frame which lacks rigid walls and a rigid bottom. Second, as discussed in more detail above, the Board of Patent Appeals and Interferences repeated failed to affirm an earlier rejection based on the use of Travis' entire container as an inner frame. The implication of the Board's rulings clearly repudiates the Examiner's current line of reasoning. Accordingly, this rejection is traversed and should be withdrawn.

The combination of Travis and Bower do not provide a "vertical crease" in the inner frame side wall

Claims 26-30 stand rejected as obvious over Hill in view of Hurwitz, Travis, and Bower, alone or in further combination with additional secondary references. The Examiner applies the combination of Hill, Hurwitz, and Travis as discussed above but acknowledges that none of these references teach a inner frame side wall having a vertical crease. Final Office Action at page 8. The Examiner alleges however, that Bower discloses a inner frame made of rigid material with the side walls comprising a vertical crease which allows for a reduction of the distance between the longitudinal side walls, as required by claims 26-30. Id. Applicant respectfully traverses this rejection.

As an initial matter, Applicant notes that a well accepted definition of a crease is a structure feature in a planar surface. Specifically, a crease is "a line, mark, or ridge made by or as if by folding a pliable substance." Exhibit C.

Bower, like Hill, Hurwitz, and Travis, provides a container system having a wire inner frame. Figure 3 of Bower show the wire inner frame having a centrally-disposed upright rod 6 in

the lateral face of the frame. Nothing in the Bower illustrations or specification teaches or suggests an inner frame with walls, let alone rigid walls. Because the inner frame does not have walls, it cannot have a crease. An upright rod (e.g., element 6) is not a crease. Accordingly, for this reason alone, the rejection of claims 26-30 is traversed.

Summary of Arguments

All examined claims stand rejected as obvious of Hill in view of Hurwitz alone or in further combination with additional secondary references. The cited prior art fails to teach or suggest at least three distinct claim elements of Applicant's claimed inner frame. Specifically, the prior art fails to provide an inner frame having rigid walls, a pivotably engaged rigid bottom, and a vertical crease in the side wall to facilitate inner frame collapse. Every inner frame disclosed in the prior art relied upon by the Examiner consists of wire struts which are used to support some type of outer shell. Each of these framing devices lack any type of side or bottom wall structure that serves to partition the inside from the outside and provide protection to the internal contents. Because the prior art fails to disclose an inner frame having a wall, the prior art necessarily fails to further teach a frame having a vertical crease in a side wall. The Examiner reliance of Travis to provide an inner frame having rigid sides is misplaced. Travis provides a container consisting of a rigid outer shell and an inner wire frame. There is no suggestion that the entire container of Travis should be used as an inner frame for another (soft-sided) outer shell. Further, the Board of Appeals and Interferences has implicitly rejected this line of reasoning by failing to affirm an earlier-presented rejection which also relied on the use of the entire Travis container as an inner frame.

In sum, each of the rejected claims contains at least one, and as many as three distinct structural requirements not taught or suggested by the cited prior art. Applicant respectfully submits that all pending rejections should be withdrawn.

CONCLUSION

Applicant respectfully submits that the pending claims are in condition for allowance. An early notice to that effect is earnestly solicited. Should any matters remain outstanding, the Examiner is encouraged to contact the undersigned at the telephone number listed below so that they may be resolved without the need for a written action.

The Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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